COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department on its own motion as to the propriety of the rates and charges set forth in the tariff filings by New England Telephone and Telegraph Company d/b/a/ Verizon	D.T.E. 98-57 (Phase I)

COMMENTS OF AT&T COMMUNICATIONS OF NEW ENGLAND, INC. REGARDING VERIZON'S JUNE 21, 2001 COMPLIANCE FILING

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On June 21, 2001, Verizon filed with the Department of Telecommunications and Energy ("Department" or "DTE") tariff revisions that purportedly complied with the Department's May 24, 2001 Phase I-B Order in this docket. On June 28, 2001, by hearing officer memorandum, the Department requested comments on Verizon's June 21, 2001, Filing, by July 9, 2001. The comments of AT&T Communications of New England, Inc. ("AT&T") are set forth below.

Introduction

The problem with Verizon's June 21, 2001, Filing is that it does something other than, or "more than", simply comply with the Department's Phase I-B Order. In many cases, where Verizon has been ordered to delete or change specific provisions of the tariff, it has done so, but at the same time added provisions that impose obligations or costs on CLECs, or give itself more rights, that had not been considered or litigated in the case. Indeed, in at least one egregious instance, Verizon modified its tariff on an issue that was not even the subject of Phase I-B.

[1] Verizon's "compliance" filing should be just that – a filing that performs the ministerial act of implementing the Department's orders, nothing less and nothing more.

Verizon has complete control over the agenda for making tariff revisions. If Verizon is not happy with the tariff after it complies with the Department's order, Verizon – unique among all carriers – is free to file modifications to its obligations to other carriers by submitting new tariff language at any subsequent time (and when it does, should do so with supporting reasons to justify them). Verizon should not be permitted to file *sub silentio* such revisions as part of a "compliance" filing.

Comments

I. THE DEPARTMENT SHOULD REJECT VERIZON'S ATTEMPT TO INTRODUCE SURREPTIOUSLY UNSPECIFIED "SAFETY AND SECURITY" PROVISIONS AND TO IMPOSE THEIR UNSPECIFIED COSTS ON CLECS.

On page 15 of its Phase I-B Order, the Department ordered Verizon to strike the requirement of an escort. While Verizon did that, it also made unauthorized changes. In particular, Verizon added a provision that "Safety and security measures described in Part E, Sections 2, 3, and 9 shall apply to remote terminal collocation." *See,* Part E, Section 11.1.5. Verizon then went on to require that "all costs associated with installing, operating, and maintaining such reasonable security measures shall be borne by the CLEC." *See also*, Part E, Section 11.2.3.D, which imposes "ICB" pricing on CLECs for security arrangements.

Imposing such broad and non-specific obligations on CLECs should not be permitted, especially not in a compliance filing where the imposition is entirely unauthorized. It is not at all clear

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[1] *See*, Part A, Section 3.2.7.A, relating to EEL provisioning intervals. (This issue is addressed in Section III, below.) Such conduct is especially unfair because reviewers of a "compliance filing" are using the Department's order as their guide and checking to see whether Verizon has implemented the Department's order. If Verizon has made changes in other areas of the tariff, such changes are likely to go unnoticed.

what Verizon has in mind. Neither Section 3 nor Section 9 has a subpart that is entitled "Safety and Security Measures." While Section 2 has such a subpart it is lengthy and extensive, and many of its provisions do not make sense outside the context of physical collocation in a central office. If Verizon wants to impose specific security obligations in connection with remote terminals, it should state in a petition to the Department what they are and justify them. It should not file them as part of a "compliance filing." Moreover, such provisions should not impose ICB pricing, which the Department has already rejected as inappropriate in a tariff. The June 21, 2001, Filing should be rejected.

II. THE DEPARTMENT SHOULD REJECT VERIZON'S UNAUTHORIZED ADDITIONS REGARDING THE SINGLE POINT OF INTERFACE ("SPOI") FOR MULTI-UNIT PREMISES.

A. THE DEPARTMENT SHOULD REJECT VERIZON'S ATTEMPT TO CHARGE FOR "EXPENSES" IN CONNECTION WITH THE CONSTRUCTION OF A SPOI.

On page 33 of the Departments Phase I-B Order, the Department ordered Verizon to provide tariff provisions under which CLECs may request and obtain the construction of SPOIs that will be fully accessible and suitable for use by *multiple* carriers. Although Verizon complied with the Department's order, it also went on to require that such construction be at the expense of the CLEC. This is an unauthorized addition. The Department's order is based on Paragraph 226 of the FCC's *UNE Remand Order*,

[2] which provides for "compensation to the incumbent LEC under forward-looking principles." Moreover, the FCC's language regarding compensation is stated in connection with the requirement

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[2] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Notice of Proposed Rulemaking, FCC 99-238, CC Docket No. 96-98 (rel. Nov. 5, 1999) ("*UNE Remand Order*")

that the SPOI be made available to *multiple* carriers. Clearly, the FCC did not provide the ILEC with a right to charge one carrier whatever expenses—including greater than forward-looking costs-- the ILEC may incur to construct a SPOI. This tariff addition should be rejected.

B. THE DEPARTMENT SHOULD REJECT VERIZON'S ATTEMPT TO INTRODUCE CLEC FORECAST REQUIREMENTS WITHOUT CONSIDERATION OR INVESTIGATION OF THEIR NECESSITY OR REASONABLENESS.

With no support, discussion or consideration, Verizon has inserted into the June 21, 2001, Filing the following:

> In addition to submitting a request to establish a SPOI, the TC shall submit a five year forecast for facilities to be provisioned to the SPOI.

Part B, Section 12.1.3.C. Verizon does not explain why such a provision is necessary, nor have CLECs had an opportunity to address why such a requirement imposes an unreasonable and unrealistic obligation on CLECs.

[3] Nowhere in the Department's order is there any authorization for the imposition of such an obligation upon CLECs. Verizon's inclusion of this entirely new provision in a filing that purports to comply with a Department order is unauthorized at best, disingenuous at worst. The Department should require Verizon to strike this unauthorized addition. Verizon is, of course, free at a subsequent date to file a petition to request the same, but should do so with supporting evidence.

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[3] In the collocation and trunking areas where CLECs submit forecasts, those forecasts are usually no more than two year forecasts, and they are considered out of date after only six months, since they are updated on a rolling six month basis. It is not surprising that Verizon is trying to introduce a five year forecast requirement without record evidence, since no record could support such a provision.

III. THE DEPARTMENT SHOULD REJECT VERIZON'S UNAUTHORIZED REVISIONS TO THE EEL SERVICE AND INSTALLATION INTERVALS.

In its June 21, 2001 Filing, Verizon proposes revisions to the service and installation intervals relating to EELs. *See*, Part A, Section 3.2.7.A. Verizon has reduced the number of links that CLECs may order before triggering Verizon's right to "negotiate" the interval.

[4] In other words, Verizon may now avoid fixed intervals on a wider range of orders than previously authorized. Nothing in the Department's Phase I-B Order, however, authorizes these adverse changes. Indeed, the Department in this docket had previously approved the intervals that were in place in the tariff that Verizon is now proposing to change. *See*, September 7, 2000 Phase I Order, at 71. Thus, the change that Verizon proposes in EEL intervals in this "compliance" filing is a proposal to move *out of compliance*.

[5] The Department should reject Verizon's attempt to circumvent the Department's prior rulings in this compliance filing.

IV. THE DEPARTMENT SHOULD REQUIRE VERIZON TO IMPLEMENT THE POLICY UNDERLYING PRIOR ORDERS OF THE DEPARTMENT RELATING TO CUTOVER OF A CLEC'S END USER TO A NID.

Verizon committed to modify its Part B, Section 12.2.2A to add the words "If requested" to

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[4] As a point of clarification, contrary to its plain meaning when Verizon offers CLECs a "negotiated" interval, that does **not** mean Verizon will negotiate the interval with the CLEC. Instead the negotiated interval is a Verizon internal negotiation—Verizon negotiating with Verizon—which is then unilaterally imposed on the CLEC. *See* Verizon UNE Product Interval Guide, at cell C70. http://www.bell-atl.com/wholesale/html/xls/interval_une1200_r_1.xls

[5] The change that Verizon is proposing to the EEL intervals is a change from the intervals in the tariff that was issued on October 5, 2000. The October 5, 2000 tariff reflected the Department's September 7, 2000 Phase I Order.

eliminate any inference that the cutover of a TC's end user to house and riser cable *must* be performed by Verizon. Verizon followed through with its commitment. However, similar language regarding cutover of a TC's end user to a NID was not also modified, leaving the inference that such a cutover *must* be performed by Verizon. *See*, Part B, Section 12.1.4.A. Such language is inconsistent with the Department's Phase 4-L Order in the *Consolidated Arbitrations* docket.

In its Phase 4-L Order, the Department stated:

> Similarly, we find no basis for a requirement that Bell Atlantic technicians have the exclusive right to make the cross-connection between the Bell Atlantic terminal block and the CLEC terminal block. On these issues, Bell Atlantic's testimony is simply not convincing.
>
> * * * *
>
> Likewise, Bell Atlantic's statement that CLEC technicians should not be permitted to make cross-connections because "it's very easy to put other people out of service if you're careless" (Tr. 23, at 51) may be true, but it is not dispositive of this issue. There is no evidence on this record, and simply no reason to believe, that trained CLEC technicians will be any more or less careful than trained Bell Atlantic technicians. Bell Atlantic's reliance on the Department's Order in the Covad arbitration is misplaced. There, our concern was the introduction of multiple third-party technicians in the highly complex environment of the main distribution frame of the central office, where the security of service to tens of thousands of customers was at stake. Here, the analogy is more closely tied to the arrival of third-party technician in installing customer premises equipment. The Bell Atlantic HARC -- while obviously tied to the network -- serves a limited number of customers in a given building. If a technician -- whether Bell Atlantic or CLEC - makes an installation error, it may surely affect one or more customers in that building, but the potential problem is orders of magnitude less significant than the problem of sabotage or error in a central office. If experience refutes this conclusion, there are remedies available.
>
> Bell Atlantic's proposals in these two areas would add costs and logistical complexity to the connection of CLEC customers to Bell Atlantic-owned HARC. Bell Atlantic has offered insufficient countervailing arguments to

> those presented by AT&T. Accordingly, *we eliminate the requirement* for a third termination block and *for Bell Atlantic to perform cross-connection activities.*

Id. at 35-36 (emphasis added). Although the Department's Phase 4-L Order was referring to the cutover of an end user to Verizon's house and riser cable, its reasoning is even more applicable to a NID, where the danger of a CLEC technician putting end-users out of service is essentially limited to the CLEC's own end-user. The Department should clarify its Phase 1-B Order so as to require Verizon to insert "if requested" in Part B, Section 12.1.4.A.

V. THE DEPARTMENT SHOULD REQUIRE VERIZON TO CLARIFY ITS RESPONSIBILITIES REGARDING BUILDING ACCESS WHEN PROBLEMS RELATED TO VERIZON'S HARC ARE IDENTIFIED.

In its Phase I-B Order, the Department agreed with AT&T and required Verizon to assume responsibility for obtaining building access when a service trouble on Verizon's HARC is reported and access to customer premises is not required. Phase I-B Order, at 46-47. The Department went on to state that "if Verizon is unable to arrange building access within twelve hours, or if it discovers after a dispatch that access to the cutomer's premises is required, at this point responsibility will transfer to the CLEC to arrange access for Verizon to the building as well as to the customer's premises." *Id*. at 47. In its compliance filing, Verizon added the following language as Section 12.2.2.G (the subpart relating to Verizon's responsibility):

> The Telephone Company shall arrange its own building access for the first twelve hours following notification by the CLEC to the Telephone Company that a service trouble involves Telephone Company house and riser cable and access to the customer's premises is not needed.

Verizon's language, however, does not fully implement the Department's order that responsibility for obtaining building access shift back to the CLEC after twelve hours. Unless Verizon

also notifies the CLEC of Verizon's inability to obtain access to the building, the CLEC will have no way to know that responsibility has shifted back to it. Failure of Verizon to notify the CLEC, therefore, could have the effect that the Department seeks to avoid – delays in restoring service. As a result, the Department should order Verizon to include in its tariff provision a Verizon obligation to notify the CLEC of its inability to obtain access to the building after twelve hours or of its inability to restore service because access to the customer premises is required.

Conclusion

For the reasons discussed above, the Department should reject Verizon's proposed tariff revisions in its June 21, 2001, Filing and order Verizon to file revisions that implement its Phase I-B Order and do only that. If Verizon wants to file further tariff revisions, it should do so openly and honestly, with appropriate supporting documentation. It should not add to the existing administrative burden of the Department and the other carriers by surreptiously including them in a compliance filing.

Respectfully submitted,

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July 9, 2001

CERTIFICATE OF SERVICE

I hereby certify that I caused a true copy of the above document to be served upon the attorney of record for each other party on July 9, 2001.

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Jay E. Gruber